



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 17-03974
)	
Applicant for Security Clearance)	

Appearances

For Government: Michelle P. Tilford, Esq., Department Counsel
For Applicant: *Pro se*

12/18/2018

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the personal conduct security concerns, and he mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On March 12, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B (foreign influence) and E (personal conduct). Applicant responded to the SOR on April 20, 2018, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on July 13, 2018, and reassigned to me on July 26, 2018. The hearing was convened as scheduled on August 14, 2018.

Evidence

Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence.

Department Counsel requested that I take administrative notice of certain facts about Iraq. Without objection, I have taken administrative notice of the facts contained in the request. The facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note is the significant threat of terrorism and ongoing human rights problems in Iraq.

Findings of Fact

Applicant is a 49-year-old employee of a defense contractor. He has worked for his current employer since 2015. He seeks to obtain a security clearance. He has a master's degree, which was awarded in 2013. He is married with three children.¹

Applicant was born in Iraq to Iraqi parents. He attended college in Iraq. He then performed his mandatory service in the Iraqi military for two years. He worked under dangerous conditions as a linguist with the U.S. military in Iraq from 2005 to 2007. Because of his work with the military, he was eligible for a special immigrant visa. Applicant and his immediate family immigrated to the United States in 2007. He became a U.S. citizen in 2013, while maintaining his Iraqi citizenship. His wife and three children also became U.S. citizens.²

Applicant's father is deceased. His mother, four siblings, and parents-in-law are citizens and residents of Iraq. His mother has never worked outside the home. His brother is a music teacher. His three sisters are married and do not work outside the home. Their husbands have no direct connection to the Iraqi government. Applicant's father-in-law retired from the Iraqi military. He receives a pension for his service, but he has no other ongoing connection to the Iraqi military or the Iraqi government.³

Applicant's grandfather passed away in 2007 or earlier. Before he immigrated to the United States, Applicant bought the family home in Iraq for the equivalent of about \$15,000. His mother was living in the house at the time. He bought the house so that his brother could live in the house and take care of his elderly mother. Applicant has no intention to ever return to live in the house. He estimated the current value of the house to be between about \$40,000 and \$45,000. He also owns a house in the United States that he purchased in 2009.⁴

Applicant regularly contacts his mother by telephone. He will speak to his brother and sisters when he calls his mother. His wife regularly contacts her parents by telephone. Applicant will usually get on the phone to say hello. He sends his mother about \$200 to \$300 per month to help with her living expenses.⁵

¹ Tr. at 47-48; GE 1, 2.

² Tr. at 19, 47-48, 51-53; GE 1, 2.

³ Tr. at 18-27; Applicant's response to SOR; GE 1, 2.

⁴ Tr. at 19-21, 28-29, 51; Applicant's response to SOR; GE 1, 2.

⁵ Tr. at 18, 21-22, 26-27; Applicant's response to SOR; GE 2

Applicant voted in an Iraqi election while in the United States in 2014. He wanted to promote democracy in Iraq. He returned to Iraq to work for defense contractors in 2009, 2010 to 2011, and periodically since 2015. He does not visit his family while he works in Iraq. He periodically visits his mother and other family members in Iraq during periods he is not working in Iraq. He credibly testified that his family in Iraq could not be used to coerce or intimidate him into revealing classified information.⁶

Applicant submitted a Questionnaire for National Security Positions (SF 86) in September 2015. He answered in the negative to questions about foreign military service; real estate in a foreign country; financial support for a foreign national; and voting in a foreign election. Applicant testified that he did not intend to provide false information. He did not think he had to report the information about Iraq, because as an Iraqi citizen, Iraq was not a foreign country to him.⁷ One of the primary definitions of *foreign* by Merriam-Webster's dictionary is "situated outside one's own country." Since Iraq was one of Applicant's two countries, his interpretation is not unreasonable. In any event, I find it was honest and genuine.

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

⁶ Tr. at 18, 20-21, 45-49, 60-61; Applicant's response to SOR; GE 1, 2.

⁷ Tr. at 17-20, 30-45, 49-51, 56; Applicant's response to SOR; GE 1, 2.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B, Foreign Influence

The security concern for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in this case:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology;

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

Applicant's mother, four siblings, and parents-in-law are citizens and residents of Iraq. His father-in-law retired from the Iraqi military. Applicant owns a house in Iraq. The potential for terrorist violence against U.S. interests and citizens remains high in Iraq, and it continues to have human rights problems. Applicant's foreign contacts and property create a potential conflict of interest and a heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion. The above disqualifying conditions have been raised by the evidence.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

I considered the totality of Applicant's ties to Iraq. Guideline B is not limited to countries hostile to the United States. The United States has a compelling interest in protecting and safeguarding classified information from any person, organization, or

country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States.⁸

The distinctions between friendly and unfriendly governments must be made with caution. Relations between nations can shift, sometimes dramatically and unexpectedly. Furthermore, friendly nations can have profound disagreements with the United States over matters they view as important to their vital interests or national security. Finally, we know friendly nations have engaged in espionage against the United States, especially in the economic, scientific, and technical fields. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government, a family member is associated with or dependent upon the government, the country is known to conduct intelligence operations against the United States, or the foreign country is associated with a risk of terrorism.

Applicant is a loyal U.S. citizen who has worked overseas under dangerous conditions in support of the national defense. He stated that his family in Iraq could not be used to coerce or intimidate him into revealing classified information. The Appeal Board has stated that such a statement, standing alone, is of limited value, unless there is record evidence that the applicant has acted in a similar manner in the past in comparable circumstances, or that the applicant has a previous track record of complying with security regulations and procedures in the context of dangerous, high-risk circumstances in which he made a significant contribution to the national security.⁹ In ISCR Case No. 05-03846 at 6 (App. Bd. Nov. 14, 2006), the Appeal Board discussed this issue as follows:

As a general rule, Judges are not required to assign an applicant's prior history of complying with security procedures and regulations significant probative value for the purposes of refuting, mitigating, or extenuating the security concerns raised by that applicant's more immediate disqualifying conduct or circumstances. See, e.g., ISCR Case No. 01-03357 at 4 (App. Bd. Dec. 13, 2005); ISCR Case No. 02-10113 at 5 (App. Bd. Mar. 25, 2005); ISCR Case No. 03-10955 at 2-3 (App. Bd. May 30, 2006). However, the Board has recognized an exception to that general rule in Guideline B cases, where the applicant has established by credible, independent evidence that his compliance with security procedures and regulations occurred in the context of dangerous, high-risk circumstances in which the applicant had made a significant contribution to the national security. See, e.g., ISCR Case No. 04-12363 at 2 (App. Bd. July 14, 2006). The presence of such circumstances can give credibility to an applicant's assertion that he can be relied upon to recognize, resist, and report a foreign power's attempts at coercion or exploitation.

⁸ ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

⁹ ISCR Case 07-06030 at 3-4 (App. Bd. June 19, 2008).

Applicant's work under dangerous conditions as a linguist with the U.S. military in Iraq from 2005 to 2007 earned him a special immigrant visa. He has returned to Iraq to work for defense contractors in 2009, 2010 to 2011, and periodically since 2015. I find that Applicant can be expected to resolve any potential conflict of interest in favor of the United States. I further find that the property in Iraq is unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure Applicant. AG ¶¶ 8(b) and 8(f) are applicable.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not intentionally provide false information about his "foreign" contacts on his 2015 SF 86. AG ¶ 16(a) has not been established. SOR ¶¶ 2.a through 2.d are concluded for Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines B and E in my whole-person analysis.

Applicant's work with the U.S. military in Iraq earned him a special immigrant visa. He returned to Iraq several times since his immigration to work for defense contractors. The Appeal Board has held that "an applicant's proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant in a Guideline B case."¹⁰ The complicated state of affairs in Iraq places a significant burden of persuasion on Applicant to demonstrate that his foreign family members do not pose an unacceptable security risk. He has met that burden.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concerns, and he mitigated the foreign influence security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	For Applicant
Subparagraphs 1.a-1.e:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a-2.d:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge

¹⁰ ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007).